



Government  
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du Canada

13<sup>th</sup> Report

# Canada's Program on Crimes Against Humanity and War Crimes 2011–2015



Canada Border Services Agency  
Department of Citizenship and Immigration  
Department of Justice  
Royal Canadian Mounted Police

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Canada 

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## Introduction

This is the 13<sup>th</sup> Report on Canada's Crimes Against Humanity and War Crimes Program, hereafter referred to as the War Crimes Program. This report summarizes program activities from April 1, 2011, to March 31, 2015. The mandate of the War Crimes Program is to deny safe haven in Canada to war criminals and persons believed to have committed or been complicit in war crimes, crimes against humanity or genocide. The War Crimes Program contributes to the governmental priority to keep communities safe by providing a comprehensive response to persons suspected of committing or being complicit in war crimes, crimes against humanity or genocide who attempt to enter or who have entered Canada.

The War Crimes Program is delivered jointly by four program partners: the Canada Border Services Agency, the Department of Citizenship and Immigration, the Department of Justice and the Royal Canadian Mounted Police. The Canada Border Services Agency enforces the *Immigration and Refugee Protection Act* in denying inadmissible persons access to Canada at ports of entry, excluding refugee claimants from protection and removing inadmissible and excluded persons from Canada. The Department of Citizenship and Immigration also applies the *Immigration and Refugee Protection Act* when determining the admissibility of temporary and permanent residents to Canada; the Department of Citizenship and Immigration conducts the initial screening as part of the visa assessment process to determine if there are reasonable grounds to believe that the applicant has committed or was complicit in the commission of war crimes, crimes against humanity or genocide. The Department of Citizenship and Immigration is responsible for initiating citizenship revocation actions at the Federal Court on fraud grounds with respect to individuals who are involved in war crimes, crimes against humanity and genocide cases. Furthermore, the Department of Citizenship and Immigration can refuse citizenship applications under the *Citizenship Act* when there are reasonable grounds to believe that an individual has committed or may have been complicit in the commission of war crimes.

Under the *Extradition Act*, the Department of Justice is the lead on cases involving extradition to foreign states or surrender to international tribunals. The Department of Justice also works with the Public Prosecution Service of Canada in criminal proceedings led by that Department. Criminal proceedings are, in turn, based on investigations conducted by the Royal Canadian Mounted Police under the *Crimes Against Humanity and War Crimes Act*. Finally, the Department of Justice provides legal advice to the Department of Citizenship and Immigration and the Canada Border Services Agency and conducts all litigation related to admissibility, exclusion and removal decisions.

Program partner officials share responsibility for managing the War Crimes Program through the War Crimes Steering Committee (the Steering Committee) and the War Crimes Program Coordination and Operations Committee. The Steering Committee, composed of senior executives at the level of Assistant Deputy Minister or its equivalent, works to ensure that the War Crimes Program's activities delivered by each program partner are aligned with the Program's objectives and overall governmental policy. The Program Coordination and Operations Committee consists of officials from each partner organization responsible for the overall management of the War Crimes Program. They carry out the following duties: operational policy development; the setting of priorities; integrated planning; common internal and coordinated external communication and information exchange; coordinated risk management through the targeting of overseas applicants, joint file review and the assessment of allegations; and accountability for performance.

An independent evaluation conducted in 2008 concluded that the War Crimes Program is relevant and necessary and that, in a cost-effective way, it boosts Canada's ability to meet its domestic and international obligations to respond to war criminals and persons believed to have committed or been complicit in war crimes, crimes against humanity or genocide. The evaluation also recommended that permanent funding be given to the War Crimes Program; in response to this recommendation, the Government of Canada funded the War Crimes Program on a permanent basis in the 2011 federal budget. The budget for the War Crimes Program is \$15.6 million per year.

This includes an ongoing commitment of \$8.4 million per year in addition to the \$7.2 million per year that the Canada Border Services Agency has from existing sources of funds. An evaluation is currently underway that will assess the relevance, effectiveness, efficiency and economy of the War Crimes Program. The evaluation will be completed in 2016, and the report will be made available on the Department of Justice website.

Canada is internationally recognized for co-operating with other countries and with international tribunals in its response to war criminals and persons believed to have committed or been complicit in war crimes, crimes against humanity or genocide. Moreover, the War Crimes Program's collaborative approach and use of multiple legislative methods to achieve its mandate have made the Program a model for similar initiatives in other countries.

For more information on the War Crimes Program, including access to previous annual reports and program evaluations, visit <http://justice.gc.ca/eng/cj-jp/wc-cdg/index.html>.

## Profile of the War Crimes Program

On February 7, 1985, the Government of Canada established the Commission of Inquiry on War Criminals in Canada (the Deschênes Commission) "to conduct such investigations regarding alleged [Nazi] war criminals in Canada, including whether any such persons are now resident in Canada and when and how they obtained entry to Canada." The Deschênes Commission's final report included recommendations on how to bring war criminals to justice, including amendments to laws and procedures governing the prosecution and removal of war criminals, the revocation of citizenship and the extradition of individuals wanted by other countries for serious international crimes.

In response to The Deschênes Commission's report, the Government of Canada established specialized war crimes sections within the Department of Justice, the Royal Canadian Mounted Police and the Department of Citizenship and Immigration in order to implement the recommendations outlined in the report. The War Crimes Program, as an interdepartmental initiative between the Department of Citizenship and Immigration, the Department of Justice and the Royal Canadian Mounted Police, was subsequently established in 1998; the Canada Border Services Agency became a program partner upon its inception in December 2003.

On December 18, 1998, Canada signed the *Rome Statute of the International Criminal Court*, ushering in even stronger laws criminalizing war crimes, crimes against humanity and genocide. In addition, the *Crimes Against Humanity and War Crimes Act* received Royal Assent on June 29, 2000, and the *Immigration and Refugee Protection Act* received Royal Assent on November 1, 2001. These legislative developments reinforced Canada's existing "no safe haven" policy and established Canada as a global leader in holding persons who have committed war crimes, crimes against humanity or genocide accountable.

While the War Crimes Program initially focused on war crimes cases stemming from the Second World War, the Program has evolved to include a number of cases that stem from post-Second World War events, such as conflicts in the former Yugoslavia, Rwanda or Iraq, and that involve not only war crimes but also crimes against humanity or genocide. The War Crimes Program emphasizes immigration remedies, namely refusing visas and denying entry to Canada to persons who are inadmissible to Canada under the *Immigration and Refugee Protection Act*. Immigration remedies have been found to be effective and cost efficient. Criminal investigations and prosecutions of war criminals are the most expensive and resource-intensive remedies and, as such, are pursued infrequently. Nonetheless, the ability to conduct criminal investigations and to prosecute is an important element of the War Crimes Program. In some cases, a criminal justice response is the most appropriate action and sends a strong message to Canadians and the international community that the Government of Canada does not tolerate impunity for war criminals or for persons who have committed crimes against humanity or genocide.

## War Crimes Program Activities from April 1, 2011, to March 31, 2015

Canada uses a holistic approach to respond to persons believed to have committed or been complicit in war crimes, crimes against humanity or genocide. The War Crimes Program has several legislative remedies at its disposal to enforce in the criminal, immigration or citizenship realms. In the case of some individuals, all three avenues are pursued. Refusal of visas overseas is the first of the immigration-based remedies and seeks to prevent persons believed to have committed or been complicit in war crimes, crimes against humanity or genocide from entering Canada. However, no prevention system is 100 percent successful; despite diligent screening measures, some of these persons are still found in Canada. For example, when an individual arrives at a Canadian port of entry, an allegation of inadmissibility results in the person being reported and referred for an admissibility hearing, and a finding of inadmissibility results in the issuance of a removal order and the individual not being allowed entry. Alternatively, information about a person's involvement in war crimes may arise after the individual is granted entry into Canada. Generally speaking, findings of inadmissibility of requests to enter Canada or ineligibility of refugee claims are examples of immigration and citizenship-based remedies that take place at ports of entry in Canada and overseas. Further immigration remedies include revocation of citizenship, refusal of citizenship applications under the *Citizenship Act* and inadmissibility reports and removal orders issued under the *Immigration and Refugee Protection Act*. Criminal investigations may be initiated by the Royal Canadian Mounted Police and can lead to prosecutions in Canada. Canada may also receive extradition requests from foreign states or an international criminal court or tribunal to arrest and surrender a person for prosecution or sentencing.

## Remedies for Persons Believed to Have Committed or Been Complicit in War Crimes, Crimes against Humanity or Genocide

### Remedies

The term “remedy” is used in this report to indicate some type of temporary or permanent resolution regarding an individual believed to have committed or been complicit in war crimes, crimes against humanity or genocide. These remedies are governed by various pieces of legislation, including the *Immigration and Refugee Protection Act*, the *Crimes Against Humanity and War Crimes Act*, the *Citizenship Act* and the *Extradition Act*. Remedies, as outlined below, can be immigration or criminal based, and one or more remedies can be employed regarding the same individual. The File Review Committee, which reports to the Program Coordination and Operations Committee, assesses each allegation and, using established criteria, determines which remedy should initially be applied.

The *Immigration and Refugee Protection Act* provides specific grounds of inadmissibility for people involved in war crimes, crimes against humanity or genocide and outlines procedures for reporting, admissibility hearings and removals. It also provides for the exclusion from the refugee determination process of people involved in war crimes or crimes against humanity. Section 35 of the *Immigration and Refugee Protection Act* states:

35(1) A permanent resident or a foreign national is inadmissible on grounds of violating human or international rights for

(a) committing an act outside Canada that constitutes an offence referred to in sections 4 to 7 of the [Crimes Against Humanity and War Crimes Act](#);

(b) being a prescribed senior official in the service of a government that, in the opinion of the Minister, engages or has engaged in terrorism, systematic or gross human rights violations, or genocide, a war crime or a crime against humanity within the meaning of subsections 6(3) to (5) of the [Crimes Against Humanity and War Crimes Act](#); or

(c) being a person, other than a permanent resident, whose entry into or stay in Canada is restricted pursuant to a decision, resolution or measure of an international organization of states or association of states, of which Canada is a member, that imposes sanctions on a country against which Canada has imposed or has agreed to impose sanctions in concert with that organization or association.

The *Crimes Against Humanity and War Crimes Act* provides for the prosecution of any individual present in Canada for any offence listed in the *Crimes Against Humanity and War Crimes Act* regardless of where the offence occurred.

In the war crimes context, the *Citizenship Act* allows for the refusal of an application for citizenship submitted by an individual who is under investigation, charged with, on trial for, subject or party to an appeal relating to, or convicted of, an offence under any of sections 4 to 7 of the *Crimes Against Humanity and War Crimes Act*. See the section below for further details. The *Citizenship Act* also provides for the revocation of citizenship of people who have obtained citizenship by fraud or misrepresentation by concealing their involvement in crimes against humanity and war crimes. Recent changes to the *Citizenship Act* have affected the revocation process considerably. See the section regarding revocation below for further details.

## Immigration-Based Remedies

### Refusal of Visas to Persons Outside Canada

The refusal of visas overseas is the most cost-effective method of preventing persons believed to have committed or been complicit in war crimes, crimes against humanity or genocide from entering Canada. This remedy is legislated under the *Immigration and Refugee Protection Act*. The Department of Citizenship and Immigration's immigration officers are the first line of defence in preventing such persons from reaching Canada, as they ensure that applicants for permanent and temporary residence are admissible under the *Immigration and Refugee Protection Act* as part of the visa assessment process.

Partners in the War Crimes Program provide training, screening aids, intelligence, research and analytical support to the Department of Citizenship and Immigration and Canada Border Services Agency officials who use this information to help identify persons who are believed to have committed or been complicit in war crimes, crimes against humanity or genocide. In some cases, a designation is made by the Minister of Public Safety and Emergency Preparedness regarding regimes that have committed war crimes. The list of regimes designated pursuant to paragraph 35(1)(b) of the *Immigration and Refugee Protection Act* is included in Appendix 4. When requested, the Canada Border Services Agency provides immigration officers with an assessment of an applicant's involvement or complicity in war crimes, crimes against humanity or genocide. The final decision to issue or refuse a visa is made by a Department of Citizenship and Immigration official. A visa allows an individual to present themselves at the port of entry for examination. A Canada Border Services Agency border services officer has the final authority to allow or refuse entry.

## Admissibility/Exclusion

### Admissibility

When allegations about the commission of or complicity in war crimes, crimes against humanity or genocide are made against persons seeking entry or those already in Canada, these cases are referred by the Canada Border Services Agency or the Department Citizenship and Immigration to admissibility hearings before the Immigration Division of the Immigration and Refugee Board. If the person is a refugee claimant, the refugee claim is suspended pending the outcome of the admissibility hearing.

The *Faster Removal of Foreign Criminals Act* (Bill C-43) received Royal Assent on June 19, 2013, bringing into force amendments that limit access to relief mechanisms under the *Immigration and Refugee Protection Act*. The amendments support the government's "no safe haven" policy by ensuring that foreign nationals who are inadmissible on grounds of security, human or international rights violations (including war crimes, crimes against humanity or genocide) or organized criminality are no longer able to apply for permanent resident status under humanitarian and compassionate provisions. Therefore, a person found inadmissible for war crimes, having committed or been complicit in war crimes, crimes against humanity or genocide, is ineligible to request humanitarian and compassionate considerations as a way to remain in Canada permanently.

Admissibility Hearing Statistics				
	2011–2012	2012–2013	2013–2014	2014–2015
Admissibility hearings initiated for non-refugee claimants	2	5	4	2
Admissibility hearings initiated for refugee claimants	9	7	6	6
Non-refugee claimants found inadmissible to Canada, because of reasonable grounds to believe the claimants committed or were complicit in war crimes, crimes against humanity or genocide, and ordered removed	0	4	0	2
Refugee claimants found inadmissible to Canada, because of reasonable grounds to believe the claimants committed or were complicit in war crimes, crimes against humanity or genocide, and ordered removed	5	8	7	3
Non-refugee claimants found admissible to Canada following a hearing at the Immigration and Refugee Board regarding war crimes, crimes against humanity or genocide	1	1	4	3
Refugee claimants found admissible to Canada following a hearing at the Immigration and Refugee Board regarding war crimes, crimes against humanity or genocide	5	2	1	2
Non-refugee claimant cases still under investigation as of March 31 of the fiscal year*	33	37	54	41
Refugee claimant cases still under investigation as of March 31 of the fiscal year*	232	105	80	35
*The investigation of complex cases may take more than one year to complete, due to the need for additional time and resources.				



## Exclusion

During the refugee claim process, claims that raise concerns about possible involvement in war crimes, crimes against humanity or genocide are investigated by the Canada Border Services Agency, and, if the results of the investigation show reasonable grounds to believe that the claimant has committed or was complicit in such crimes, then the Canada Border Services Agency intervenes before the Immigration and Refugee Board's Refugee Protection Division and seeks to exclude the claimant from refugee protection. Under article 1F of the 1951 United Nations Convention Relating to the Status of Refugees, a person cannot be a Convention refugee if they have committed war crimes, crimes against humanity, serious non-political crimes outside Canada, crimes against peace or acts contrary to the purposes and principles of the United Nations.

Exclusion Statistics				
	2011–2012	2012–2013	2013–2014	2014–2015
Refugee claims investigated by the Canada Border Services Agency for the commission of or complicity in war crimes, crimes against humanity or genocide	602	503	365	445
Interventions filed by the Canada Border Services Agency before the Immigration and Refugee Board's Refugee Protection Division to exclude claimants from refugee protection because there were reasonable grounds to believe that the claimants committed or were complicit in war crimes, crimes against humanity or genocide	103	59	77	41
Cases excluded from refugee protection by the Immigration and Refugee Board's Refugee Protection Division because there were reasonable grounds to believe that the claimants committed or were complicit in war crimes, crimes against humanity or genocide	37	34	8	5
Cases denied refugee protection by the Immigration and Refugee Board's Refugee Protection Division for reasons other than reasonable grounds to believe that the claimants committed or were complicit in war crimes, crimes against humanity or genocide, where an intervention for exclusion had been filed	15	31	38	10
Cases granted refugee protection by the Immigration and Refugee Board's Refugee Protection Division where an intervention for exclusion had been filed	11	18	13	3
Refugee claims withdrawn or abandoned by claimants	22	13	15	5

## Supreme Court of Canada Decision Impacts on the War Crimes Program

On July 19, 2013, the Supreme Court of Canada rendered its decision in *Ezokola v. Canada (Citizenship and Immigration)*, 2013 SCC 40, [2013] 2 SCR 678, refining the law with respect to complicity for the purposes of determining exclusion pursuant to Article 1F of the United Nations Convention Relating to the Status of Refugees. The Supreme Court of Canada established a new contribution-based test requiring serious reasons for considering that an individual made a voluntary, significant and knowing contribution to an organization's international crimes or criminal purposes. The decision has impacted Canada Border Services Agency and Department of Citizenship and Immigration programs, as it applies directly to inadmissibility decisions made under paragraph 35(1)(a) of the *Immigration and Refugee Protection Act* and Article 1F exclusion decisions.

## Cessation/Vacation of Refugee Protection

In some instances, an individual can have their refugee status removed. In cases of cessation, a person ceases to be a refugee if, for example, they voluntarily re-availed themselves of the protection of their country of nationality or obtained protection from another country (citizenship). A person can have their refugee status vacated if they obtained that status by directly or indirectly misrepresenting or withholding material facts relating to a relevant matter.

## Danger Opinion

If a protected person or Convention refugee is the subject of a deportation order, they cannot be removed because of the principle of non-refoulement. Non-refoulement is a principle of international law that forbids the return of a victim of persecution to their persecutor. In immigration practice, this means that individuals cannot be returned to a state if there is evidence to indicate that, if returned there, their lives or freedoms would be threatened. If individuals are found inadmissible to Canada, but their protected person or Convention refugee status was not vacated or ceased, these individuals cannot be removed unless the Canada Border Services Agency obtains a danger opinion from the Minister of Citizenship and Immigration prior to removal. A danger opinion assesses if an individual poses such a considerable risk to the Canadian public that they must be removed, notwithstanding their protected status. Paragraph 115(2)(b) of the *Immigration and Refugee Protection Act* also states that a person can be removed if they are found to be inadmissible on grounds of security, violating human or international rights or organized criminality and, in the opinion of the Minister, the person should not be allowed to remain in Canada on the basis of the nature and severity of acts committed or of danger to the security of Canada.

## Removal

Persons who were excluded from the refugee process, whose refugee or protected person status has been vacated or has ceased or who were otherwise found inadmissible to Canada can be removed after all legal avenues have been exhausted. See below for more detailed information on removals.

# Admissibility Hearing and Removal from Canada under the *Immigration and Refugee Protection Act*

## Admissibility Hearing

Allegations that individuals have participated in war crimes, crimes against humanity or genocide are received in a variety of ways. Allegations may originate from witnesses, foreign governments, community groups, non-governmental organizations, immigration proceedings or open-source information. If a Canada Border Services Agency officer or an official of the Department of Citizenship and Immigration has reasonable grounds to believe that a permanent resident or a foreign national who is seeking entry to Canada or who is in Canada is inadmissible on grounds of human or international rights violations, the officer may prepare a report setting out the relevant facts and refer it to a Minister’s delegate. A Minister’s delegate who is of the opinion that the report is well founded may refer the report to the Immigration and Refugee Board’s Immigration Division for an admissibility hearing to determine the merits of allegations of inadmissibility and to issue an applicable removal order, if appropriate.

## Removal

Persons who are excluded from refugee protection or who are otherwise found inadmissible to Canada can be removed after all legal avenues have been exhausted and a pre-removal risk assessment has been conducted. Persons whose citizenship has been revoked and for whom a removal order has been issued may also be subject to removal.

Pursuant to the *Immigration and Refugee Protection Act*, an officer may issue a warrant for the arrest and detention of a permanent resident, protected person or foreign national when there are reasonable grounds to believe that the individual is inadmissible under any provision of the *Immigration and Refugee Protection Act* and either poses a danger to the public or is unlikely to appear for an examination, an admissibility hearing, a removal from Canada or a proceeding that could lead to the issuing of a removal order by the Minister’s delegate. The *Immigration and Refugee Protection Act* also allows for the arrest and detention of foreign nationals without a warrant. An immigration warrant is executed when an individual is arrested.

Removal Statistics				
	2011–2012	2012–2013	2013–2014	2014–2015
Persons removed from Canada following a finding of inadmissibility because the persons committed or were complicit in war crimes, crimes against humanity or genocide	24	41	17	17
Canada Border Services Agency inventory of enforceable removal orders with respect to refugee claimants who were found inadmissible to Canada on the reasonable grounds that they committed or were complicit in war crimes, crimes against humanity or genocide	38	123	102	74
Removal orders that could not be carried out because of impediments*	96	57	49	71
Removal orders awaiting pre-removal risk assessments	52	56	55	27
Immigration warrants issued	11	9	9	8
Immigration warrants executed	12	13	4	4
Inventory of outstanding immigration warrants at the end of the fiscal year (includes outstanding warrants from previous years)	176	172	177	181
*Such as a stay issued by a court or a lack of travel documents				

## Citizenship-Based Remedies

### Prohibition under the *Citizenship Act*

The *Crimes Against Humanity and War Crimes Act* makes consequential amendments to the *Citizenship Act* with a view to explicitly prohibit those convicted or in the process of being prosecuted under the *Crimes Against Humanity and War Crimes Act* from being granted citizenship. These *Citizenship Act* provisions read as follows:

22 (1) Despite anything in this Act, a person shall not be granted citizenship under subsection 5(1), (2) or (4) or 11(1) or take the oath of citizenship

(c) while the person is under investigation by the Minister of Justice, the Royal Canadian Mounted Police or the Canadian Security Intelligence Service for, or is charged with, on trial for, subject to or a party to an appeal relating to, an offence under any of sections 4 to 7 of the [Crimes Against Humanity and War Crimes Act](#);

(d) if the person has been convicted of an offence under any of sections 4 to 7 of the [Crimes Against Humanity and War Crimes Act](#).

### Revocation of Citizenship

The War Crimes Program partners continue to assess and investigate allegations concerning Canadian citizens who are believed to have committed or been complicit in war crimes stemming from the Second World War. However, the majority of cases related to the Second World War have been concluded. Future citizenship revocation cases that come to the attention of the War Crimes Program are more likely to pertain to such acts in the modern context (see Appendix 2). The Department of Justice, the Canada Border Services Agency, the Royal Canadian Mounted Police and the Department of Citizenship and Immigration work together in investigating allegations and assessing cases for possible revocation. These cases involve collecting information and evidence from domestic and international sources and take considerable time to complete.

On June 19, 2014, Bill C-24 received Royal Assent, and the *Strengthening Canadian Citizenship Act* became law. The objectives of the legislative reform included increasing the efficiency of the Citizenship Program, reinforcing the value of Canadian citizenship, strengthening program integrity and combating fraud, and protecting and promoting Canada's interests and values.

Amendments to the *Citizenship Act* intended to streamline the existing revocation process are relevant to the War Crimes Program. The Federal Court will be the decision maker in cases involving allegations of false representation, fraud or knowingly concealing material circumstances with respect to war crimes, crimes against humanity and genocide. A new streamlined ground for revocation has been created in order to pursue cases that fall under this category. Subsection 10.1(1) of the *Citizenship Act* states:

10.1 (1) If the Minister has reasonable grounds to believe that a person obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances, with respect to a fact described in section 34, 35 or 37 of the [Immigration and Refugee Protection Act](#) other than a fact that is also described in paragraph 36(1)(a) or (b) or (2)(a) or (b) of that Act, the person's citizenship or renunciation of citizenship may be revoked only if the Minister seeks a declaration, in an action that the Minister commences, that the person has obtained, retained, renounced or resumed his or her citizenship by false representation or fraud or by knowingly concealing material circumstances and the Court makes such a declaration.

The current decision-making process regarding citizenship revocation is expected to streamline the revocation process by including a concurrent decision-making authority for removal from Canada. The Department of Citizenship and Immigration commences an action in the Federal Court seeking a declaration that the person has obtained his or her citizenship by false representation or fraud or by knowingly concealing material circumstances. The declaration by the Federal Court revokes that person's citizenship. The Court may also be asked to make a declaration that the person is inadmissible on grounds of violating human or international rights under subsection 35(1) of the *Immigration and Refugee Protection Act* if the Minister of Public Safety and Emergency Preparedness joins as a party to the action. The declaration by the Federal Court that the person is inadmissible is a removal order that comes into force when it is made. This streamlined process allows for better alignment with other remedies. The decision to pursue a declaration that the person is inadmissible rests with the Minister of Public Safety and Emergency Preparedness.

An applicant may appeal the decision of the Federal Court to the Federal Court of Appeal if the Federal Court certifies a serious question of general importance. An applicant may also seek leave to appeal the decision of the Federal Court of Appeal to the Supreme Court of Canada.

Transitional provisions in the *Citizenship Act* state that any proceeding that is pending before the Federal Court immediately before the day it comes into force will continue under subsection 10.1(1) of the *Citizenship Act*.

The various elements of the *Strengthening Canadian Citizenship Act* serves to improve the functioning of Canada's War Crimes Program, thanks to a renewed focus on fraud deterrence.

## Criminal-Based Remedies

### Criminal Investigation and Prosecution

Under the *Crimes Against Humanity and War Crimes Act*, the Royal Canadian Mounted Police is responsible for the criminal investigation of individuals alleged to have committed or been complicit in war crimes, crimes against humanity or genocide. It is important to note that an administrative investigation of a case is different from a criminal investigation. The authority to pursue administrative remedies, such as a visa refusal, exclusion from refugee protection or citizenship revocation, is derived from the *Immigration and Refugee Protection Act* and the *Citizenship Act*. The evidentiary threshold of an administrative investigation is also different from that of a criminal investigation and prosecution. In order to pursue a criminal investigation and prosecution, the allegations must disclose personal involvement or command responsibility, and the evidence pertaining to the allegation must be corroborated and obtainable in a reasonable and rapid fashion, among other considerations. A criminal investigation of a war crime, crime against humanity or genocide allegation is challenging and resource intensive; travel and negotiations with foreign governments are frequently required, language barriers often need to be overcome and witnesses can be difficult to locate and reluctant to provide testimony to investigators.

The Royal Canadian Mounted Police interviews witnesses and is responsible for investigating the allegations. The Department of Justice assists the Royal Canadian Mounted Police with analyzing investigation results and provides legal advice on specific legal issues within a file. The consent of the Attorney General of Canada or the Deputy Attorney General of Canada is required to commence proceedings for offences under the *Crimes Against Humanity and War Crimes Act*. If the recommendation is to prosecute, the matter is forwarded to the Public Prosecution Service of Canada for consideration and prosecution. If the Public Prosecution Service of Canada lays charges, the Department of Justice provides subject matter and logistical support throughout the trial.

## Extradition to Other States or Surrender to International Criminal Court or Tribunal Upon Request

Extradition is the process by which one state surrenders a person to another state for the purpose of prosecution or of imposing or enforcing a criminal sentence. Under Canada's *Extradition Act* and related treaties, countries with which Canada has an extradition agreement or entities that are designated in the Schedule to the *Extradition Act* (including the International Criminal Tribunal for the former Yugoslavia, the International Criminal Tribunal for Rwanda and the International Criminal Court) may request that Canada arrest and surrender a person sought for prosecution or sentencing who is located on Canadian soil and is wanted for extraditable conduct.

The Minister of Justice is responsible for the administration of the *Extradition Act* and the implementation of extradition treaties or conventions to which Canada is a party. Where the requirements of the *Extradition Act* and any applicable treaty or convention are met, the Minister of Justice may authorize the commencement of extradition proceedings before the superior court in the jurisdiction in which the person sought has been located. The court must determine whether there is sufficient evidence to justify the person's committal for extradition. In all cases, the conduct for which extradition is sought must be considered criminal in both the requesting country and Canada. This is known as "dual criminality."

Where the person is committed for extradition by the superior court, the Minister of Justice must personally decide whether or not to order the person's surrender to the foreign state and if conditions should be imposed on any surrender order. The International Assistance Group at the Department of Justice is delegated to act on behalf of the Minister of Justice in all matters under the *Extradition Act*, with the exception of the decision on surrender.

Extradition requests are confidential communications unless and until the matter is made public through court proceedings.

## Ongoing International Co-operation and Outreach

The individuals who support the War Crimes Program participate in numerous co-operative and outreach activities. These activities promote the sharing of information and best practices and preserve strong, reciprocal relationships between the Government of Canada, other countries, international tribunals and governmental and non-governmental stakeholders. The benefits of these activities are significant; by sharing logistical and investigative resources, Canada increases its capacity to deny war criminals safe haven and to demand accountability for their crimes.

Canadian missions abroad have ongoing relationships with host countries, other diplomatic missions, international organizations and criminal tribunals. These relationships facilitate the monitoring of overall migration trends; Canadian missions abroad regularly participate in meetings on the subject of migration and human rights. Additionally, international co-operation is essential in order to conduct investigations into war crimes matters. This is often because war crimes have occurred in conflict zones where information is difficult to acquire. Furthermore, a level of cooperation between Canada and the state involved is almost always necessary in order to access government officials, locate and interview witnesses and victims, etc.

Throughout the reporting period, the Royal Canadian Mounted Police and the Department of Justice also engaged and educated a variety of audiences about elements of the War Crimes Program. These audiences included other governmental departments, domestic and international law enforcement agencies and students. The Royal Canadian Mounted Police and the Department of Justice gave presentations about the techniques and challenges of investigations into war crimes, crimes against humanity and genocide; cultural diversity encountered during the investigations process; negotiation procedures used to facilitate collaboration with officials in other countries; and the War Crimes Program itself. Officials from the Department of Justice also wrote and published articles about war crimes issues in academic journals and delivered guest lectures and seminars at high schools, community organizations and universities in Canada and abroad (including in Tanzania and the United Kingdom and at the United Nations in New York).

Capacity-building activities have been a particular focus of counsel from the Department of Justice. At the request of the government of Senegal, a counsel was seconded to the Office of the Prosecutor of the Extraordinary African Chambers for Chad to help set up that office and initiate the prosecution of former President Hissene Habre of Chad and others. The same counsel headed a Canadian-funded project that published the first compendium of lessons learned and suggested practices from the Offices of the Prosecutors from various International Tribunals.

Domestic and international partners can request support and information on war crimes, crimes against humanity or genocide cases from the War Crimes Program. Requests for information are typically tracked by each program partner, and both internal and external requests regarding cases believed to involve war crimes, crimes against humanity or genocide continue to increase.

War crimes units from the United States, Australia and the United Kingdom work closely with the Canada Border Services Agency under the *Four Country Conference Memorandum of Understanding (MOU) with Respect to Investigations Relating to Genocide, War Crimes and Crimes Against Humanity*, signed in April 2007. The Royal Canadian Mounted Police is also mandated to assist partner agencies in other countries on cases that involve war crimes, crimes against humanity or genocide. This assistance can involve locating witnesses and suspects, taking statements and providing intelligence requested by international partners. To carry out this mandate, the Royal Canadian Mounted Police collaborates with the Department of Justice. Members of war crimes units from these countries and others have sent their experts to provide lectures and training to Canada's War Crimes Program partners.

The Department of Justice also assists the Royal Canadian Mounted Police investigators by submitting requests for access to witnesses to other countries and international tribunals. The results of these requests support ongoing investigations that may lead to criminal charges in Canada or the revocation of citizenship and deportation.

Analysts and historians from the Department of Justice also use archives located around the world to search for documents relevant to Canadian cases.

Training is an ongoing and important activity of the War Crimes Program. As part of the Canada Border Services Agency's commitment to the Program, the Operations Branch's Security Intelligence Section held a three-day workshop in the spring of 2014. All four partner departments and agencies, as well as international partners, participated.

During the workshop, specialized training was given to Canada Border Services Agency personnel. The objective of this training was to provide an overview of the War Crimes Program, including its legal foundations and recent court decisions related to the interpretation of section 35 (human and international rights violators) of the *Immigration and Refugee Protection Act*. Another objective of the workshop was to strengthen Canada Border Services Agency personnel's knowledge base and skill set for duties connected with the War Crimes Program, such as the screening of individuals who may be of concern under section 35 of the *Immigration and Refugee Protection Act*. Best practices and lessons learned in the field of information sharing among Canada Border Services Agency colleagues, other governmental departments, international partners and non-governmental community experts were discussed in order to raise awareness among the participants. The workshop also strengthened relationship-building and cooperation with the War Crimes Program's international partners. Lastly, the potential to further develop networks for war crimes-related information sharing was discussed both within Canada and internationally (the Five Country Conference and other like-minded countries in the European Union). The workshop was deemed a success in meeting its objectives by participants and organizers.

## Conclusion

Canada's War Crimes Program continues to show strong results in responding to persons believed to have committed or been complicit in war crimes, crimes against humanity or genocide.

The holistic approach taken by the Government of Canada in the application of both immigration- and criminal-based remedies provides multiple avenues to hold perpetrators accountable for their actions and to remove them from Canada when appropriate. With the provision of permanent funding in 2011, the War Crimes Program has been able to chart a more definitive and stable course. Furthermore, as the Canadian immigration system evolves to meet the challenges of the present day and with the coming into force of Bill C-43 (*Faster Removal of Foreign Criminals Act*) and the changes to the *Citizenship Act* with Bill C-24 (*Strengthening Canadian Citizenship Act*), the War Crimes Program will continue to evolve in order to fulfill its mandate.

Canada's War Crimes Program continues to succeed in achieving its overarching mandate: to deny safe haven in Canada to war criminals and persons believed to have committed or been complicit in war crimes, crimes against humanity or genocide and to demand accountability for their conduct, thereby contributing to the domestic and international fight against impunity for the perpetrators of such acts.



## Appendix 1: Case Samples

### Revocation of Citizenship

**Oberlander, Helmut:** Helmut Oberlander did not declare his involvement with Nazi forces in the Second World War, first as an interpreter and later as an infantry member, when he was granted permanent residency in 1954 and citizenship in 1960.

In February 2000, the Federal Court decided that Mr. Oberlander had obtained citizenship through deception by concealing his membership in *Einsatzkommando 10a*, a unit that systematically carried out mass executions of civilians, particularly Jews, in the occupied Soviet Union.

The Governor-in-Council revoked Mr. Oberlander's Canadian citizenship in July 2001. In May 2004, the Federal Court of Appeal quashed the revocation because the report of the Minister of Citizenship and Immigration on which the Governor-in-Council had based its decision failed to address if Mr. Oberlander's case fell within the Canadian government's revocation policy for Second World War cases and also did not balance Mr. Oberlander's personal interests against the public interest.

In May 2007, the Governor-in-Council revoked Mr. Oberlander's citizenship for a second time. Mr. Oberlander applied for judicial review of this decision, which was dismissed by the Federal Court. At the Federal Court of Appeal, Mr. Oberlander raised for the first time the issue of duress as justification for his complicity in the atrocities committed by the Nazis. In November 2009, the Federal Court of Appeal remitted the matter to the Governor-in-Council for consideration of the issue of duress.

In September 2012, the Governor-in-Council revoked Mr. Oberlander's citizenship for a third time. Mr. Oberlander filed an application for judicial review in November 2012, which was dismissed in January 2015.

Mr. Oberlander filed a Notice of Appeal with the Federal Court of Appeal on February 11, 2015. The Federal Court of Appeal heard the appeal on February 1, 2016. The Federal Court of Appeal allowed the appeal, with costs, on February 15, 2016. The Court remitted the issues of complicity and duress to the Governor-in-Council for redetermination in accordance with the law.

The Attorney General of Canada filed an application for leave to appeal to the Supreme Court of Canada on April 14, 2016, which was dismissed on July 7, 2016. In accordance with the Federal Court of Appeal's decision, the Minister of Citizenship and Immigration may submit Mr. Oberlander's case to the Governor-in-Council for redetermination of the issues of complicity and duress in accordance with the law.

**Rogan, Branko:** This was the first citizenship revocation case involving a war crimes-related matter in the modern context. In August 2007, a Notice of Intention to Revoke Citizenship was served on Mr. Rogan pursuant to section 18 of the *Citizenship Act*. In August 2011, the Federal Court decided that Mr. Rogan had provided misleading or false information when he sought admission to Canada in 1994 regarding his work as a reserve police officer and guard at detention facilities in the municipality of Bileca in Bosnia-Herzegovina and his personal and knowing participation in the commission of the crimes against humanity of persecution and "other inhumane acts." Specifically, the Federal Court decided that Mr. Rogan participated directly and indirectly in the abuse of Muslim prisoners in detention facilities in Bileca.

The Immigration and Refugee Board's Refugee Protection Division vacated Mr. Rogan's refugee status on October 8, 2014, and the Canada Border Services Agency issued a deportation order against him on the same date. Mr. Rogan filed applications for leave and for judicial review of the vacation and deportation decisions on October 22, 2014, which the Federal Court dismissed on January 28 and February 3, 2015, respectively.

**Halindintwali, Celestin:** Celestin Halindintwali immigrated to Canada from Rwanda in July 1997 after being granted a visa as a Convention refugee; he obtained Canadian citizenship in June 2001. Mr. Halindintwali was alleged to have made numerous misrepresentations and to have knowingly concealed material facts concerning his affiliation with political organizations and militia groups as well as his active participation in human rights violations committed by the civilian and military authorities, the *Interahamwe* militia and the civilian self-defence organization during the 1994 genocide in Rwanda.

On June 6, 2013, the Minister served Mr. Halindintwali with a Notice of Intention to Revoke Citizenship. Mr. Halindintwali requested that the matter be referred to the Federal Court. The Statement of Claim was filed on November 27 and served on December 4, 2013. A Statement of Defense was not served or filed. Consequently, the Minister filed a motion for default judgment, which was heard on January 13, 2015.

On March 27, 2015, Madam Justice Bédard of the Federal Court granted the motion for default judgment and found that Mr. Halindintwali had obtained his citizenship by false representation or fraud or by knowingly concealing material circumstances. The Court did not accept the evidence regarding the participation of Mr. Halindintwali in the genocide, concluding that the hearsay evidence did not meet the criteria of necessity and reliability. Based on the Federal Court decision, the Minister of Citizenship and Immigration may submit Mr. Halindintwali's case to the Governor in-Council for a decision on citizenship revocation.

**Rubuga, Maurice:** Maurice Rubuga (alias Gervais Ndahayo), a Rwandan citizen from the Hutu ethnic group, claimed refugee status on July 2, 1998. The Immigration and Refugee Board's Refugee Protection Division granted this status on October 13, 1999. On December 13, 1999, he applied for permanent residence and became a permanent resident on May 31, 2001. He then applied for citizenship and became a Canadian citizen on September 13, 2004.

Mr. Rubuga was alleged to have obtained his refugee and permanent resident status as well as his Canadian citizenship by false representation or by knowingly concealing material circumstances. He was alleged to have falsified information in relation to his identity, his school and work history, his position within the Rwandan Armed Forces (FAR), his involvement in the training of the militia and his alleged mistreatment by the Rwandan authorities.

On March 28, 2014, the Minister of Citizenship and Immigration served Mr. Rubuga with a Notice of Intent to Revoke Citizenship. On April 7, 2014, Mr. Rubuga requested that the matter be referred to the Federal Court. The Statement of Claim was filed on August 26, 2014, and served on Mr. Rubuga's counsel. Counsel advised on October 10, 2014, that a Statement of Defence would not be filed. Consequently, the Minister filed a motion for default judgment on February 16, 2015, which was heard on April 14, 2015. Mr. Rubuga's case fell under the transitional provisions in the *Citizenship Act*, which state that any proceeding that is pending before the Federal Court immediately before the day it comes into force continues under subsection 10.1(1) of the *Citizenship Act*.

On September 14, 2015, Madam Justice Gleason of the Federal Court granted the motion for default judgment and found that Mr. Rubuga had acquired his Canadian citizenship by false representation or fraud or by knowingly concealing material circumstances, within the meaning of subsection 10.1(1) of the *Citizenship Act*, in relation to his identity, school curriculum, marital status and employment history and that he had hidden the fact that he was a second lieutenant with the Rwandan Armed Forces. This declaration had the effect of revoking Mr. Rubuga's citizenship.

Mr. Rubuga reverted to foreign national status under the *Immigration and Refugee Protection Act*. The matter is currently with the Canada Border Services Agency for determination of next steps.

## Criminal Investigation and Prosecution

**Munyaneza, Désiré:** On October 19, 2005, Mr. Munyaneza, a Rwandan national, was arrested in Toronto for alleged activities relating to the Rwandan genocide in 1994. Mr. Munyaneza was charged with two counts of genocide, two counts of crimes against humanity and three counts of war crimes, pursuant to the *Crimes Against Humanity and War Crimes Act*.

Following a rogatory commission held in Kigali, Rwanda, and a trial before the Superior Court of Quebec, Mr. Munyaneza was convicted on May 22, 2009, of all seven counts of war crimes, crimes against humanity and genocide. In October 2009, he was sentenced to life imprisonment without parole for 25 years. Mr. Munyaneza's appeals of his conviction and sentence were dismissed by the Quebec Court of Appeal on May 7, 2014. On August 5, 2014, Mr. Munyaneza filed an application for leave to appeal to the Supreme Court of Canada, which was dismissed on December 18, 2014.

**Mungwarere, Jacques:** On November 6, 2009, following a Royal Canadian Mounted Police investigation, the Public Prosecution Service of Canada commenced criminal proceedings against Mr. Mungwarere before the Ontario Superior Court of Justice in Ottawa. He was charged with crimes against humanity or genocide in relation to the 1994 genocide in Rwanda. This was the second prosecution in Canada under the *Crimes Against Humanity and War Crimes Act* since the law was adopted in 2000. The trial began in late spring 2012 and ended on March 21, 2013. During the course of the 26-week trial, most of the witnesses testified via video link from Kigali, Rwanda. On July 5, 2013, Justice Charbonneau found Mr. Mungwarere not guilty.

On June 24, 2013, the Canada Border Services Agency served Mr. Mungwarere with a notice of intent to vacate his refugee status. On September 18, 2014, the Immigration and Refugee Board's Refugee Protection Division vacated Mr. Mungwarere's refugee status. Mr. Mungwarere filed an application for leave and for judicial review of the decision in Federal Court, which was dismissed on January 10, 2015. The matter is currently with the Canada Border Services Agency for determination of next steps.

## Admissibility, Eligibility, Refugee Claim Determination and Resultant Inquiry and Removal from Canada under the *Immigration and Refugee Protection Act*.

A citizen of both Serbia and Hungary was a member of the Yugoslav Army from 1998 to 1999 and was a soldier stationed in Pec, Kosovo. Well-documented reports confirm the Yugoslav Army engaged in a widespread and systematic operation of forced deportation and ethnic cleansing of Kosovar Albanians, including in the location of Pec, Kosovo.

In March 2012, the individual arrived at Pearson International Airport with his wife and child. He was examined at the port of entry by Canada Border Services Agency border services officers due to his suspected involvement in crimes against humanity. After being denied entry as a visitor, the individual made a claim for refugee protection and was detained for continued examination.

In March 2012, the individual was reported inadmissible to Canada, pursuant to paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, and was referred to the Immigration and Refugee Board's Immigration Division for an admissibility hearing.

The individual denied witnessing or taking part in any atrocities committed by the Yugoslav Army. He also denied ever coming into contact with civilians.

In June 2012, the individual was found inadmissible to Canada, pursuant to paragraph 35(1)(a) of the *Immigration and Refugee Protection Act*, and was issued a deportation order. The Immigration Division noted the finding of inadmissibility rested “heavily on the issue of credibility in this case.” The Immigration Division also concluded that it was not willing to accept the statements he made at the hearing claiming ignorance of the human rights abuses.

As a result of the inadmissibility finding, he was found ineligible to pursue his refugee claim. In July 2012, he was removed from Canada to Hungary.

## Appendix 2: Modern File Inventory – Active Files: the Department of Justice and the Royal Canadian Mounted Police

Modern File Inventory – Active Files*	
Department of Justice	
Initial allegation files	26
Criminal files (Royal Canadian Mounted Police)	11
Civil files	30
Active files*	57

\*as of February 1, 2016

## Appendix 3: Summary of the War Crimes Program – Department of Citizenship and Immigration and Canada Border Services Agency

Please note that the Canada Border Services Agency has changed the way screening for inadmissibility is performed for both temporary and permanent residents since the publication of the last War Crimes Report.

The following statistics are included to provide a broad analysis of the activities of the War Crimes Program by the Department of Citizenship and Immigration and the Canada Border Services Agency.

### Permanent Resident Referrals for Canada Border Services Agency Screening under Section 35 of the *Immigration and Refugee Protection Act* by Sub-Activity Status and Fiscal Year\*

Fiscal Year	Favourable	In Progress by Canada Border Services Agency	Inconclusive Findings	Information Required	No Recommendation Required	Non-Favourable	Grand Total
2011–2012	43	0	0	0	4	47	<b>94</b>
2012–2013	90	0	5	1	20	116	<b>232</b>
2013–2014	160	0	4	1	26	191	<b>382</b>
2014–2015	341	2	20	2	46	411	<b>822</b>

\*An application can have one or more refusal grounds.

**Permanent Resident Applications Refused under Section 35 of the *Immigration and Refugee Protection Act* by Fiscal Year\***

Fiscal Year	A35(1)	A35(1)(a)	A35(1)(b)	A35(1)(c)	A35(2)	Total
2011–2012	4	1	2			7
2012–2013	3	4	7	1	2	17
2013–2014	5	7	3	1	1	17
2014–2015	4	27	12		1	44
<b>Grand Total</b>	<b>16</b>	<b>39</b>	<b>24</b>	<b>2</b>	<b>4</b>	<b>85</b>

\*An application can have one or more refusal grounds.

**Referrals for Canada Border Services Agency Screening for Temporary Resident Applications with Allegations under Section 35 of the *Immigration and Refugee Protection Act***

Temporary Resident Category	2011–2012	2012–2013	2013–2014	2014–2015
Study Permit	106	109	35	19
Temporary Resident Visa	3592	2488	2212	1969
Work Permit	100	93	172	48
<b>Temporary Resident Total</b>	<b>3798</b>	<b>2690</b>	<b>2419</b>	<b>2036</b>

**Temporary Resident Non-Favourable Recommendations by Fiscal Year and Final Assessment**

Temporary Resident Category	2011–2012*	2012–2013*	2013–2014*	2014–2015
<b>Study Permit</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>0</b>
Approved	0	0	1	0
Refused	0	0	1	0
<b>Temporary Resident Visa</b>	<b>70</b>	<b>200</b>	<b>182</b>	<b>275</b>
Approved	12	79	78	115
Refused	33	66	48	68
Unspecified	1	1	5	22
Withdrawn	24	54	51	70
<b>Work Permit</b>	<b>2</b>	<b>4</b>	<b>5</b>	<b>2</b>
Approved	0	0	1	0
Refused	2	4	4	2

\*An application can have one or more refusal grounds.

**Temporary Resident Refusals under Section 35 of the *Immigration and Refugee Protection Act* by Fiscal Year**

Temporary Resident Category	2011–2012	2012–2013	2013–2014	2014–2015
Study Permit	1	1	2	2
Temporary Resident Visa	37	78	54	73
Work Permit		6	6	3
<b>Grand Total</b>	<b>38</b>	<b>85</b>	<b>62</b>	<b>78</b>

\*An application can have one or more refusal grounds.

## **Appendix 4: Regimes Designated Pursuant to Paragraph 35(1)(b) of the *Immigration and Refugee Protection Act***

Designated June 16, 1993, extended on August 15, 1997: the Bosnian-Serb regime from March 27, 1992, to October 10, 1996.

Designated October 12, 1993: the Siad Barre regime in Somalia from 1969 to 1991.

Designated April 8, 1994: the former military governments in Haiti from 1971 to 1986 and from 1991 to 1994, except for the period from August to December 1993.

Designated October 21, 1994: the former Marxist regimes in Afghanistan from 1978 to 1992.

Designated September 3, 1996, amended September 9, 2004: the governments of Ahmed Hassan Al Bakr and Saddam Hussein in power in Iraq from 1968 until May 22, 2003.

Designated April 27, 1998: the government of Rwanda under Juvénal Habyarimana from October 1990 to April 1994 as well as the interim government in power from April 1994 to July 1994.

Designated June 30, 1999, amended March 14, 2001: the governments of the Federal Republic of Yugoslavia and the Republic of Serbia under Slobodan Milosevic from February 28, 1998, to October 7, 2000.

Designated March 14, 2001, amended September 9, 2004: the Taliban regime in Afghanistan from September 27, 1996, to December 22, 2001.

Designated November 21, 2003: the Government of Ethiopia under Mengistu Haile Mariam from September 12, 1974, to May 21, 1991.